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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/763,426
Filing Date: January 23, 2004
Appellant(s): BAUERLY, SHELLY LENNA

Ronald R. Shea

For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed February 12, 2009 appealing from the Office action mailed January 10, 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2,253,998	Lurie et al.	09-1992
10-113275	Omura	05-1998

It should be noted that Appellant has provided Exhibits 1-7 under "Evidence Appendix", which appear to be somewhat unnecessary, since these "exhibits or documents" are the record of the prosecution of the instant case. No affidavits or definitions are being relied upon by appellant.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims **1-2, 22** and **37** are rejected under 35 U.S.C. 103(a) as being unpatentable over GB Patent No. 2,253,998 to Lurie et al. in view of JP 10-113275 to Omura.

As to claims 1 and 22, Lurie et al teaches hanger device for hanging handbags, purses or the like (Figs. 1-4) from a horizontal surface, comprising a rigid interface member defining a planar interface area (12); a rigid arm with a proximal segment terminating at proximal end 19, a distal segment 20, 21, 22, 23, 15) terminating at distal end 21,22, 23, 15, a centrally extension (a bend or curve between 13 and 20) disposed between proximal segment and a distal segment, wherein the proximal end is coupled with the rigid interface member, the proximal end being in a orientation substantially parallel to the planar interface area and curving into the central extension, and wherein

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the central extension curves into the distal segment which extends vertically downward (20) from the central extension when the distal end is positioned vertically beneath the planar interface area. Note that the distal end in this case, the examiner considers as segment (21, 22, 23, and 15 upon which a handbag, purse or the like can be supported or secured).

The Lurie device differs from claim 1 of the present invention in that it is not provided with a flexible member with a first end coupled to the distal end (at the v-shaped) of the rigid arm, and a second end coupled to a purse engagement member. Omura teaches the concept of such, Omura teaches the hanger device with a flexible member (6) having a first end coupled to the distal end of the rigid arm (3) and a second end coupled to a purse engagement member (8). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a flexible member with a first end coupled to the distal end of the rigid arm and a second end coupled to a purse engagement member as in Omura on the hook of Lurie in order to allow a user to hang the type of the purse where there is no full top closure of the interior of the purse and to provide a configuration which to be easily opened/closed and/or attached/detached (Omura, abstract).

As to claim 2, Lurie as modified also teaches the distal end of the rigid arm being oriented vertically beneath the geometric center of said planar interface area.

As to claim 37, claims 37 recited limitations similar to claims 1 and 22, except that the central extension in this case is element 20.

(10) Response to Argument.

Appellant argues that the rejection of claims 1-2, 22 and 37 should be reversed by the Board as based upon plain error in characterizing the prior art: a mid point is not the distal end; and a rigid arm bending into a vertical alignment beneath the rigid interface area is not found in either Lurie et al. or Omura. The examiner respectfully disagrees. First, as discussed in the final action above, it is clearly that Lurie discloses the central extension curve (between element 13 and 20) and the distal segment 20 that extends vertically downward. Lurie also discloses the distal end (portion of 20, and 21, 22, 23 and 15) and terminating at the distal end 21, 23, 15 and positioned vertically at point 23 beneath the planar interface area (claims 1, 22 and 37) (note that the central extension of claim 37 is defined as element 20). Lurie is structurally the same as appellant's claimed invention except for the manner of attaching the purse. Omura teaches vertical members 3, 7, flexible member 6 and purse engagement member 8. To modify Lurie with a vertical component at 23, flexible member 3 and purse engagement member 8 taught by Omura is well within the skill level of one of ordinary skill. Second, in response to Appellant's argument with respect to the definition of "distal end" based on Merriam-Webster's Collegiate Dictionary, the examiner maintains that point 23 to hook 15 is the "distal segment" and "the distal end" of the Lurie device supporting the purse (See reference page 7, lines 12-14). Assuming arguendo that the distal end is not the region somewhere between the V-shaped hook 21, 23, 15, the combination of Lurie et al. and Omura still meets and fairly suggests the subject matter as specified in claims 1, 2, 22 and 37 by having the ring 7 (which would

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extend vertically), flexible member 6 and clasp 8 Omura fixedly hanging over the V-shaped region 23 of Lurie et al. This modification will provide the distal end ring hook 7 securely hanging from the V-shaped region 23 for hanging the flexible member 6 of Omura; thus the distal ring hook 6 of Omura in combination of Lurie et al. provides the distal end with extending vertically downward as stated in the claims. Omura clearly sets forth the vertical component of the claimed invention as shown in Figures 1,4-5. The examiner maintains that a person of ordinary skill in the art would have known to use of known technique to improve similar device in the same way to yield a predictable result by modifying the distal end/purse engagement section of Lurie with the flexible chain/purse engagement member of Omura. The resulting device would have a vertically extending component as claimed.

Appellant also argues that the rejection of claims 1-2, 22 and 37 should be reversed by the Board as based upon the combination teaching away from stated purpose and no motivation to combine the references of Lurie et al. and Omura. This argument is also transverse by the examiner. First, Lurie et al. teaches a hanger for supporting a handbag or a purse from a table top or a counter, the load of the handbag is hung from the upper table or counter by supporting arms 13 and 14. Omura also teaches the invention related to a hand bag which is hanging from the upper surface of the table or the counter; the load of the handbag is hung from the upper surface of the table or the counter by supporting arm 3 and flexible ring with locking mechanism 3, 8

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which can be easily detached and located without becoming lost in the purse of the user.

A problem faced by Appellant was that there is a need for a purse holder that can be easily located without becoming lost in the purse of a user. There is also a need for a purse holder that will not readily slide off a table. Omura is reasonably pertinent to this problem. Omura teaches a hand bag for hanging securely from the upper surface of the table or the counter; and the load of the handbag is hung from the upper surface of the table or the counter by supporting arm 3 and flexible ring with locking mechanism 3, 8 which can be easily located without becoming lost in the purse of the user and it can be changed by detachment. Thus Omura clearly teaches what Lurie et al does not appear to be specifically addressed. The deficiencies of Lurie et al. with respect to the distal end attachment with flexible and locking members are remedied by the teaching of Omura. Thus the combination of teachings of Lurie et al. and Omura clearly meets and fairly suggest the subject matter of claims 1-2, 22 and 37. The examiner has provided the rationale and reasons as to why one of ordinary skill in the art would have been expected to draw therefrom in light of existing prior art knowledge. Appellant, however, has not provided any persuasive reasons why the examiner's finding is in correct. It appears that Appellants are attempting to impart the reference of Lurie et al. while the rejection is based on the combination. One cannot show non-obvious by attacking references individually where the rejection is based on the combination of the references. The combination of Lurie et al. in view of Omura would have fairly suggested at least the subject matter of claims 1-2, 22 and 37 as stated in the final

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action. Note that the present claims using open-ended language of "comprising", therefore it is proper to use the references as stated under 103 rejections.

In addition to the motivation to combine, it should be noted that the rationale to modify or combine the prior art does not have be expressly stated in the prior art; rationale may be expressly or impliedly contained in the prior art or it may be reasoned from knowledge generally available to one of ordinary skill in the art, established scientific principles, or legal precedent established by prior case law. In refine, 837 F.2d 1071,5 USPQ2d 1596 (Fed. Cir. 1988); In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). Since the appellant has failed to address the reasoning supplied by the examiner as to why the modification would have not been obvious, the applicant's arguments are not persuasive.

In summary, the examiner has considered all of the disclosure of what it would be fairly taught by the prior art taken as a whole, which one of ordinary skill in the art would have been expected to draw therefrom in light of existing prior knowledge it would have been no more than an obvious matter to combine the teaching of the prior art to the invention, which render the subject matter obvious within the meaning of 35 U.S.C.103. Claims 1-2, 22 and 37 were combination which only unites old elements with no change in their respective functions and which yields predictable results. Therefore, the claimed subject matter would have been obvious, KSC, 127 S. Ct at 1740, 82 USPQ 2d at 1396.

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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

CONCLUSION:

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Tan Le/
Examiner, Art Unit 3632

Conferees:

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